



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2023-0092; FRL-10674-01-R9]

### Air Plan Revisions; California; Eastern Kern Air Pollution Control District; Oxides of Nitrogen

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of a revision to the Eastern Kern Air Pollution Control District (EKAPCD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of oxides of nitrogen (NO<sub>x</sub>) from stationary gas turbines. We are proposing action on a local rule that regulates these emissions sources under the Clean Air Act (CAA). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0092 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional

submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3245 or by email at [evanshopper.lakenya@epa.gov](mailto:evanshopper.lakenya@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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## **I. The State’s Submittal**

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Revised	Submitted
EKAPCD	425	Stationary Gas Turbines (Oxides of Nitrogen)	01/11/18	05/23/18

On November 15, 2018, the EPA determined that the submittal for EKAPCD Rule 425 met the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

*B. Are there other versions of this rule?*

We approved an earlier version of Rule 425 into the SIP on March 1, 1996 (61 FR 7992). The EKAPCD adopted revisions to the SIP-approved version on January 11, 2018, and the CARB submitted them to us on May 23, 2018. If we take final action to approve the January 11, 2018 version of Rule 425, this version will replace the previously approved version of this rule in the SIP.

*C. What is the purpose of the submitted rule revision?*

Emissions of NO<sub>x</sub> contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO<sub>x</sub> emissions. Rule 425 establishes updated limits on NO<sub>x</sub> and carbon monoxide (CO) for stationary gas turbine engines (units), equal to or greater than 0.88 megawatts (MW) operating in the EKAPCD. NO<sub>x</sub> emission limits were set for stationary turbines, depending on their size, for both gaseous and liquid fuel, with exemptions for smaller low-use engines, emergency standby units, and additional categories described in the technical support document (TSD). NO<sub>x</sub> emission limits and work practice standards were also set for periods of startup and shutdown. Monitoring requirements for continuous emissions monitoring system (CEMS) control system operating parameters, providing source testing for the exhaust gas NO<sub>x</sub> concentration, maintenance of records for five years, and clarification on monitoring exhaust gas NO<sub>x</sub> concentrations for units at 10 MW or greater were added. Extra test methods for NO<sub>x</sub> and oxygen for compliance testing and

administrative requirements for exempt units have been added to the rule. The EPA's TSD has more information about this rule.

## **II. The EPA's Evaluation and Action**

### *A. How is the EPA evaluating the rule?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)) and must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)).

Generally, SIP rules must require reasonably available control technology (RACT) for each major source of NO<sub>x</sub> in ozone nonattainment areas classified as Moderate or above (see CAA sections 182(b)(2) and 182(f)). The EKAPCD regulates an ozone nonattainment area classified as Serious for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS), Severe for the 2008 8-hour ozone NAAQS and Moderate for the 1997 8-hour ozone NAAQS. (40 CFR 81.305). Therefore, this rule must implement RACT for major sources in the nonattainment area.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
3. "State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction," 80 FR 33839, June 12, 2015.
4. "NO<sub>x</sub> Emissions from Stationary Gas Turbines," EPA 453/R-93-007, January 1993.

5. “Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines,” CARB, May 18, 1992.

B. *Does the rule meet the evaluation criteria?*

Rule 425 improves the SIP by expanding the applicability threshold of the rule to smaller units and non-cogeneration units, strengthening requirements during startup and shutdown periods, and clarifying monitoring, recording and recordkeeping provisions. The rule is largely consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. *What are the rule deficiencies?*

The EPA is proposing to determine that the following provision does not satisfy the requirements of section 110 and part D of title I of the Act and prevents full approval of the SIP revision, for reasons described here and explained in further detail in the TSD.

1. Rule 425, section (V)(B) revised the NO<sub>x</sub> limits for Westinghouse W251B10 turbines with Authority to Construct permits issued before 1983 to 25 parts per million by volume. This revised limit is higher than the limits for comparably sized units elsewhere in the District, and higher than the limits applicable to such units in the existing SIP-approved version of Rule 425. The submission has not sufficiently justified why this higher limit meets the RACT requirement. Moreover, the submission, which is seemingly a relaxation of the rule, is not accompanied with a sufficient explanation as to why the relaxation does not interfere with attainment of the NAAQS or reasonable further progress. As a result, the submission has not shown compliance with the requirement of CAA section 110(l).

D. *The EPA’s recommendations to further improve the rule*

The TSD includes recommendations for the next time local agency modifies the rule.

E. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes a limited approval of the submitted rule because it largely fulfills all relevant requirements and strengthens the SIP. The EPA simultaneously proposes a limited disapproval because of the deficiency described in Section II.C of this document. We will accept comments from the public on this proposal until **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because the EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3).

If we finalize this disapproval, CAA section 110(c) would require the EPA to promulgate a federal implementation plan within 24 months unless we approve a subsequent SIP revision that corrects the deficiencies identified in our evaluation.

In addition, final disapproval would trigger the offset sanction in CAA section 179(b)(2) 18 months after the effective date of a final disapproval, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the deficiencies identified in our final action before the applicable deadline.

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the EKAPCD Rule 425, Stationary Gas Turbines (Oxides of Nitrogen), revised January 11, 2018, which regulates NO<sub>x</sub> and CO for stationary gas turbine engines equal to or greater than 0.88 MW. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the FOR FURTHER INFORMATION CONTACT section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175,

because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population*

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair



treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action limitedly approves and limitedly disapproves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law.

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of EO 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 22, 2023.

**Martha Guzman Aceves,**

*Regional Administrator,*

*Region IX.*

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